

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

VICTOR JULIAN TURNER,

Plaintiff,

v.

TORI TALKEY, et al.,

Defendant.

CASE NO. 3:20-CV-5472-BHS-DWC

ORDER

Plaintiff is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action filed pursuant to 42 U.S.C. § 1983. Before the Court are two motions filed by Plaintiff: (1) Motion to stay Plaintiff's 42 USC § 1983 Claim Pending Appeal of Report and Recommendation (Dkt. 26, "Motion to Stay") and (2) Motion to Strike Affirmative Defenses Pursuant to Fed. R. Civ. P. 12 (Dkt. 29, "Motion to Strike").¹

¹ Also pending is Plaintiff's Second Motion to Strike Defendants Affirmative Defense (Dkt. 33, "Second Motion to Strike") which attacks Defendants' Amended Answer (Dkt. 31). The Second Motion to Strike is ready for the Court's consideration on October 9, 2020 and will be addressed in a separately filed order. Dkt. 33.

1 **1. Motion to Stay (Dkt. 26)**

2 Plaintiff moves for the Court to stay this case pending his eventual, but not yet filed,
3 appeal of undersigned's report and recommendation denying Plaintiff's Motion for Preliminary
4 Injunction (Dkt. 8, 24). Dkt. 26.

5 On July 23, 2020, the undersigned issued a report and recommendation denying
6 Plaintiff's Motion for Preliminary Injunction. Dkt. 24. Plaintiff filed objections. Dkt. 25. On
7 September 21, 2020, the District Judge assigned to this matter, the Honorable Benjamin H.
8 Settle, adopted the undersigned's report and recommendation and denied Plaintiff's Motion for
9 Preliminary Injunction. Dkt. 34.

10 Plaintiff's Motion to Stay seeks a stay of this matter during a future appeal to the Ninth
11 Circuit. Dkt. 26. Plaintiff has not yet filed an appeal of Judge Settle's Order Adopting the Report
12 and Recommendation or any decision of this Court. Plaintiff has not demonstrated any reason to
13 stay this case pending the outcome of a prospective appeal. Accordingly, the Motion to Stay
14 (Dkt. 26) is denied as premature without prejudice.

15 **2. Motion to Strike (Dkt. 29)**

16 Defendants filed their Original Answer to the Complaint on August 17, 2020, listing
17 three affirmative defenses. Dkt. 27. On August 27, 2020, Plaintiff filed the Motion to Strike. Dkt.
18 29. On September 8, 2020, Defendants filed an Amended Answer, listing one affirmative
19 defense. Dkt. 31. On September 11, 2020, Defendants filed a Response to the Motion to Strike.
20 Dkt. 32.

21 Rule 12(f) of the Federal Rules of Civil Procedure allows a district court to "strike from a
22 pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous
23 matter." *Whittlestone, Inc. v. Handi-Craft Co.*, 618 F.3d 970, 973 (9th Cir. 2010). Defendants
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1 are required to “affirmatively state any avoidance or affirmative defenses.” Fed. R. Civ. P.
2 8(c)(1).

3 Here, the Motion to Strike seeks to strike the affirmative defenses as alleged by
4 Defendants in the Original Answer. Dkt. 27, 29. Defendants filed an Amended Answer on
5 September 8, 2020. Dkt. 31. Defendants may amend once as a matter of course within 21 days
6 of serving their Answer. *See* Fed. R. Civ. P. 15(a)(1)(A). In light of the filing of the Amended
7 Answer, Plaintiff’s Motion to Strike (Dkt. 29) seeking to strike the affirmative defenses in the
8 Original Answer is denied as moot. *See Russell Rd. Food & Beverage, LLC v. Galam*, 2013 WL
9 6684631, at *1 (D. Nev. Dec. 17, 2013) (denying motion to strike affirmative defenses in the
10 answer as moot once an amended answer was filed).

11 Dated this 23rd day of September, 2020.

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14 David W. Christel
United States Magistrate Judge
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